
Telecommunications Association of Maine

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November 1, 2013

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW, Suite TW-A325
Washington, DC 20554

RE: *Petition of Time Warner Cable Information Services (Maine), LLC for Designation as a Lifeline-Only Eligible Telecommunications Carrier in the State of Maine, WC Docket No. 09-197*

Dear Ms. Dortch,

The Telecommunications Association of Maine (TAM) initially filed comments jointly with the Maine Office of the Public Advocate on September 6, 2013, ("TAM Comments") in the above captioned proceeding concerning Time Warner Cable Inc.'s (TWC) request for Lifeline-only Eligible Telecommunications Carrier (ETC) status in Maine. On September 23, 2013, TWC filed reply comments ("TWC Reply Comments") that materially misrepresented the position of TAM in this proceeding. TAM is filing this *ex parte* document to clarify the inaccuracies in TWC's reply comments.

In TAM's Comments in this proceeding, comments that were made jointly with the Maine Office of the Public Advocate, TAM indicated that:

"TAM and the OPA do not oppose the request by TWC to provide Lifeline-only service in Maine *so long as it complies with all of the MPUC rules regarding Lifeline in Maine.*"

TAM Comments at 2 (emphasis added). TAM reiterated this concept by stating:

"In conclusion, TAM and the OPA do not oppose the request for Lifeline-only ETC status by TWC *on the condition that, in granting approval to TWC for designation as an ETC for Lifeline purposes in Maine, the Commission preserve the public interest as established by the MPUC and explicitly condition any approval on TWC complying with all Lifeline obligations as set forth in the MPUC Rules, including but not limited to the additional \$3.50 rate reduction for qualifying customers.*"

Id. at 3 (emphasis added). Despite this clear and unambiguous conditional support based on compliance with the existing Maine Rule, TWC states:

"Accordingly, the Commission should expeditiously grant TWCIS(ME)'s unopposed petition for designation as a Lifeline-only ETC, without any conditions."

TWC Reply Comments, at 3. The lack of opposition exists if and only if there are conditions, specifically that TWC agree to the existing Lifeline obligations in Maine as written. In case there was any confusion on the matter, TAM absolutely and unequivocally **opposes** designation of TWC as a Lifeline only ETC in Maine if the conditions set forth in TAM's Comments are not included in the FCC Order.

Moreover, TWC argues that TAM's request for conditions lacks legal basis, stating:

"Indeed, TWCIS(ME) is not aware of any instance in which the Commission conditioned a Lifeline-only ETC designation in this manner, and TAM/OPA do not cite any precedent in support of their proposal. . . . To the contrary, the Commission's responsibility under Section 214(e)(6) of the Act is to assess whether the carrier seeking ETC status has satisfied the applicable statutory and regulatory prerequisites under federal law. TWCIS(ME) has done so, and TAM/OPA do not contend otherwise."

TWC Reply Comments, at 1. However, contrary to TWC's position, on page 2 of the *TAM Comments* the FCC's own Order¹ was cited, which expressly stated:

"As a result, any concerns raised by a rural telephone company will be evaluated by the designating authority when considering designating a limited, Lifeline- only ETC."

Therefore, TWC's attempt to limit the scope of what the FCC may consider has already been explicitly rejected by the FCC itself. In this instance, the designating authority is the FCC, meaning that the concerns raised by TAM, representing the rural telephone companies in Maine, are expressly to be included in the consideration by the delegating authority prior to any grant of approval. The *TWC Reply Comments* once again misrepresent the facts, the legal framework, and the contents of the *TAM Comments*.

Perhaps the most disturbing part of *TWC's Reply Comments*, beyond the blatant misrepresentation of the facts, is the clear implication that TWC does in fact intend to challenge the validity of the Maine Rules as they would apply to TWC. As written, there is zero ambiguity in the Rule, it applies to all ETCs without distinction. The only way that this Rule would not apply would be if a party, such as TWC, actively petitioned the Commission for a waiver of the Rule. Based on the arguments in *TWC's Reply Comments* it seems clear that TWC intends the very thing TAM and the OPA were concerned with, namely an attempt to game the system to the detriment of the customers in Maine in order to obtain a windfall of federal dollars without actually integrating their Lifeline programs with the Statewide standards in Maine. This sort of manipulation is a clear contributing factor to the fact, as noted by the October 11, 2013 letter to the FCC

¹ In the Matter of Lifeline and Link Up Reform, WC Docket No. 11-42, FCC 13- 44, Memorandum Opinion and Order, released April 15, 2013, (hereinafter "FCC Lifeline Order")

from 44 members of the House of Representatives in the United States Congress requesting details of how to curb the waste, fraud and abuse in the Lifeline program ("Congressional Letter"), that:

"The cost of this Government-run phone program has exploded from under \$800 million in 2005 to \$2.2 billion in 2012, and there is no end in sight."

If the FCC continues to approve companies, such as TWC, for Lifeline support then at the very least it must be tied to strong oversight at the State level and a clear message that any Lifeline only ETC must be closely monitored to ensure that the Lifeline program is actually used to benefit low-income customers in whatever manner the State regulators, who have closer ties and understanding of the needs of the customers within their own State, deem appropriate. Otherwise the worst fears of the *Congressional Letter* will surely come to fruition, and the Lifeline-only ETC process will be exposed as a mere windfall for carriers, contributing to the perception that:

"Unfortunately, it's too late for the public's trust to be restored in any capacity for the Lifeline program."

Congressional Letter, at 1. To avoid perpetuating this view of the Lifeline program, it is crucial that the FCC clearly and unambiguously direct TWC to comply with the Maine Rules regarding Lifeline and not seek to undermine, challenge, or obtain waivers from the provisions of the Rule. Contrary to TWC's arguments, this is not interpreting State Law, it is simply directing TWC to comply with State law and not try to wriggle out from its obligations once approval is granted by the FCC.

In conclusion, TAM remains of the position that approval of Lifeline Only ETC status for TWC in Maine would be appropriate **if and only if** TWC is expressly required to comply with the existing State Rule on Lifeline and not seek to undermine the Rule through challenges or waivers at the State level on a going forward basis. If, however, TWC is simply seeking a cash windfall without any actual care or concern for the people of Maine, then the FCC should send a clear message to TWC and to Congress that waste, fraud and abuse of the Lifeline program will not be tolerated. This message should be sent not through words but through actions, by soundly rejecting TWC's request.

Sincerely,

A handwritten signature in blue ink, appearing to read "B. Sanborn", with a long horizontal flourish extending to the right.

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